

24-cv-06313-fpg

Revised 03/06 WDNV

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

**FORM TO BE USED IN FILING A CIVIL COMPLAINT IN FEDERAL COURT
(Non-Prisoner Context)**

All material filed in this Court is now available via the INTERNET. See **Pro Se Privacy Notice** for further information.

1. CAPTION OF ACTION

A. Full Name of Plaintiff: **NOTE:** *If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application or the only plaintiff to be considered will be the plaintiff who filed an application.*

LAMAR FLOYD, PRO SE

-vs-

B. Full Name(s) of Defendant(s) **NOTE:** *Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. Add a separate sheet, if necessary.*

1. Nathan D. McMurray

4. _____

2. Wegmans Food Markets, Inc.

5. _____

3. _____

6. _____

2. STATEMENT OF JURISDICTION, VENUE and NATURE OF SUIT

*All of these sections **MUST** be answered*

Identify the basis for federal Court jurisdiction over your claim, such as that the United States government is a party to the action, all the parties reside in different states and therefore you claim diversity jurisdiction, or the claim presents a federal question or arises under federal law.

A. Basis of Jurisdiction in Federal Court: Nathan McMurray was hired as my attorney to file a discrimination law suit against Wegmans, said he did so, but never did, and now the case is closed due to his negligence.

State why the Western District of New York is the proper venue for this action, such as that your claim arises in or the defendant resides in the 17 westernmost counties of New York State.

B. Reason for Venue in the Western District: Plaintiff resides in the City of Rochester, New York.

Identify the nature of this action, such as that it is a civil rights claim, a personal injury or personal property (tort) claim, a property rights claim, or whatever it is.

C. Nature of Suit: Civil rights claim against Wegmans was closed because Mr. McMurray failed to respond and file the law suit.

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION NOTE: *To list additional plaintiffs, use this format on another sheet of paper.*

Name of First Plaintiff: Lamar Floyd

Present Address: 116 Covington Road, Rochester, NY 14617

Name of Second Plaintiff: _____

Present Address: _____

DEFENDANT'S INFORMATION NOTE: *To list additional defendants, use this format on another sheet of paper.*

Name of First Defendant: Nathan D. McMurray

Official Position of Defendant (if relevant): Special Counsel/Advocates for Justice

Address of Defendant: 225 Broadway, Suite 1902, New York, New York 10007

Name of Second Defendant: Wegmans Food Markets, Inc.

Official Position of Defendant (if relevant): _____

Address of Defendant: 1500 Brooks Avenue, Rochester, NY 14624

Name of Third Defendant: _____

Official Position of Defendant (if relevant): _____

Address of Defendant: _____

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes ☐ No ☒

If Yes, complete the next section. NOTE: *If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. Court (if federal court, name the district; if state court, name the county): _____

3. Docket or Index Number: _____

4. Name of Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes ☐ No ☐

If not, give the approximate date it was resolved. _____

Disposition (check those statements which apply):

☐ Dismissed (check the statement which indicates why it was dismissed):

☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

☐ By court due to your voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

☐ plaintiff

☐ defendant.

5. STATEMENT OF CLAIM

Please note that it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, just tell the story of what happened and do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995).

Fed.R.Civ.P. 10(b) states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

A. FIRST CLAIM: On (date of the incident) December 22, 2022,

defendant (give the name and (if relevant) the position held of each defendant involved in this incident) _____

did the following to me (*briefly state what each defendant named above did*): failed to file a rebuttal response to the NYS Division of Human Rights (See attached letter dated February 21, 2023) regarding the complaint that was filed with them (Case No., 10222287). Plaintiff suffered racial discrimination while employed with Wegmans Food Markets, Inc. Because Mr. McMurray didn't file within the timeframe noted on the complaint, the Plaintiff lost the opportunity to respond as well as be able to file a lawsuit. Therefore, I'm filing this civil case against Mr. McMurray for his negligence in handling my case.

The federal basis for this claim is: Civil suit

State briefly **exactly** what you want the Court to do for you. *Make no legal arguments and cite no cases or statutes:*
I would like to see that Mr. McMurray be held accountable for his actions and be disbarred.

B. SECOND CLAIM: On (*date of the incident*) December 22, 2022,
defendant (*give the name and (if relevant) position held of each defendant involved in this incident*) Wegmans Food Markets Inc.

did the following to me (*briefly state what each defendant named above did*): Plaintiff alleges that Wegmans administers it's attendance policy inconsistently and/or in a manner that discriminates against "black" employees. See attached document dated February 17, 2023.

The federal basis for this claim is: Violation of Human Rights.

State briefly **exactly** what you want the Court to do for you. *Make no legal arguments and cite no cases or statutes:*
Plaintiff wishes this Court to open the case against Wegmans and permit Plaintiff to proceed with the civil case against Wegmans.

If you have additional claims, use the above format to set them out on additional sheets of paper.

6. SUMMARY OF RELIEF SOUGHT

Summarize the relief requested by you in each statement of claim above.

Plaintiff would like the issue of negligence handled with regard to Mr. Nathan McMurray.

Plaintiff would like to pursue a civil lawsuit against Wegmans for racial violation of his rights.

Do you want a jury trial? Yes ☒ No ☐

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
(date)

NOTE: *Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.*

Signature(s) of Plaintiff(s)

TEAMSTERS LOCAL No.118

Grievance Number: 141

WEGMANS GRIEVANCE FORM

Name (Print): Lamar Floyd Employee No.: 607215 Dept: GR0

Address: _____

City: _____ State: _____ Zip: _____

Home Phone: _____ Work Phone: _____ Extension: _____

NATURE OF GRIEVANCE

Note: In writing up this complaint, be careful to give accurate information with exact dates and complete details. Your Union Officers depend on this information to secure a just settlement from the Company.

Article(s), Section(s) EXHIBIT A Attendance Policy

See Attachment 1

Signature of Complainant: [Signature] Date: 10-24-22

Signature of Union Steward: [Signature] Date: 10-24-2022

Union Steward Name (Print): Kenny Chong

If Settled, enter date and explanation of settlement: _____

For Office Use Only:

Received Date: 10/25/22 Management Initials: BK

I Lamar Floyd, feel discriminated by Wegmans for being an advocate for employees. On October 7th, 2022, I was suspended without "just cause".

On October 1st, 2022 I verbally communicated with Team Leader Paul Trapasso, that I would be taking a "leaving early" before getting forced. Later that day before the end of shift, management unforced some employees. I believe I should have gotten a ½ point deduction per contract Attendance Policy Exhibit A; not a 5 day suspension. It was management's poor planning of how much labor was needed for 10/1/2022 as there was no need to force the entire building. Per agreement, the crew out tool was designed to relief time wasted on crewing out only; not with intention to force.

Around mid-May 2022, Sean Pubman informed me to put both hands on the Jack.

On June 11th, 2022, I got into a forklift accident. Department Manager Cam Paul called me in to the office for the accident report write up; Union Steward Kenny Chonge was present. Cam Paul added the conversation I had with Sean Pubman 3 to 4 weeks ago to the accident write up. I believe this is a "breach of contract" since the write up was passed the 10 day window. As a result, I am requesting that the conversation with Sean Pubman that Cam Paul added to the write up be removed from my file.

About 1.5 years ago, while in fresh food Team Leader Javier (last name unknown) was disrespecting employees. As a Union Steward, I was speaking up for the employees. Due to the tensions between Javier and myself, I ended up leaving early. I later brought the conversation between myself/other employees with Javier to the attention of Director of Warehouse Operations Roy Winters. Roy paid me for the time missed, but on the contrary gave me a ½ point.

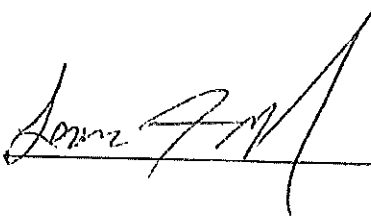
On October 7th, 2022, I requested to complete a Harassment Statement against (some) Wegmans' Warehouse Management with HR Jim Loiacona. Jim informed me that he couldn't assist me with completing a statement at the moment and that he would get back to me. I also requested to see my folder and was denied by Jim. Later that day, Jim called me into the office with Union Steward Kenny Chonge and informed me that he would assist me with the statement when I return from my suspension; return date 10/14/2022.

On Friday October 14th, 2022, I spoke to Jim via phone and was informed that a statement could be completed on Tuesday October 18th since Kenny Chonge is off on Mondays as I requested Kenny Chonge to represent as a Union Steward.

On October 17th, 2022, I contacted Kenny Chonge to see if he could confirm a time to meet with Jim. Jim informed Kenny that he was unable to meet on that day as he was fully booked for the rest of the day and that he would be "out of the office" for remainder of the week; thus I am still awaiting to do my Harassment Statement. Jim allowed so much time to pass without assisting me with my Management Harassment Statement, when Employee vs Employee Harassment Statements are completed in a timely manner.

Correspondingly, I feel that I have been discriminated by Wegmans' Warehouse Management (some) and would like for these complaints to be placed on record. Some of Wegman's Warehouse Management has a history of unjust treatment in which should be reviewed and documented accordingly.

Signature of Complainant:



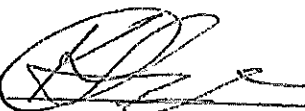
Date: 10-21-22

Name of Complainant:

Homer Floyd

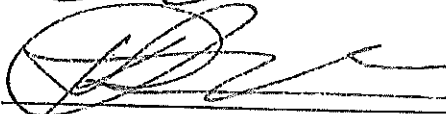
Date: 10-21-22

Signature of Union Steward:



Date: 10-24-2022

Name of Union Steward:



Date: 10-24-2022

Received Date: 10/25/22 Management Initials: bk



November 9, 2022

Mr. Ty VanPelt
Teamsters Local 118
130 Metro Park
Rochester, NY 14623

Dear Ty:

This letter is the Company's response (under Article 2 of the collective bargaining agreement) to Grievance # 141, which was submitted on behalf of Lamar Floyd. Grievance #141 alleges a violation of Exhibit A – Attendance Policy stating "I Lamar Floyd, feel discriminated by Wegmans for being an advocate for employees. On October 7th, 2022, I was suspended without "just cause."

"On October 1st, 2022 I verbally communicated with Team Leader Paul Trapasso, that I would be taking a "leaving early" before getting forced. Later that day before the end of shift, management unforced some employees. I believe I should have gotten a ½ point deduction per contract Attendance Policy Exhibit A; not a 5 day suspension. It was management's poor planning of how much labor was needed for 10/1/22 as there was no need to force the entire building. Per agreement, the crew out tool was designed to relief time wasted on crewing out only; not with intension to force."

Mr. Floyd goes on to state "Around mid-May 2022, Sean Pubman informed me to put both hands on the jack."

"On June 11th, 2022, I got into a forklift accident. Department Manager Cam Paul called me in to the office for the accident report write up; Union Steward Kenny Chonge was present. Cam Paul added the conversation I had with Sean Pubman 3 to 4 weeks ago to the accident write up. I believe this is a "breach of contract" since the write up was passed the 10 day window. As a result, I am requesting that the conversation with Sean Pubman that Cam Paul added to the write up be removed from my file."

Mr. Floyd states "About 1.5 years ago, while in fresh food Team Leader Javier (last name unknown) was disrespecting employees. As a Union Steward, I was speaking up for the employees. Due to the tensions between Javier and myself, I ended up leaving early. I later brought the conversation between myself/other employees with Javier to the Director of Warehouse Operations Roy Winters. Roy paid me for the time missed, but on the contrary gave me a ½ point."

Mr. Floyd also states "On October 7th, 2022, I requested to complete a Harassment Statement against (some) Wegmans' Warehouse Management with HR Jim Loiacona. Jim informed me that he couldn't assist me with completing a statement at the moment and that he would get back to me. I also requested to seam my folder and was denied by Jim. Later that day, Jim called me into the office with Union Steward Kenny Chonge and informed me that he would assist me with the statement when I return from my suspension; return date 10/14/2022."

"On Friday October 14th, 2022, I spoke to Jim via phone and was informed that a statement could be completed on Tuesday October 18th since Kenny Chonge is off on Mondays as I requested Kenny Chonge to represent as a Union Steward."

Mr. Floyd states "On October 17th, 2022, I contacted Kenny Chonge to see if he could confirm a time to meet with Jim. Jim informed Kenney that he was unable to meet on that day as he was fully booked for the rest of the day and that he would be "out of the office" for the remainder of the week; thus I am still waiting to do my Harassment Statement. Jim allowed so much time to pass without assisting me with my Management Harassment Statement, when Employee vs Employee Harassment Statements are completed in a timely manner."

Lastly, Mr. Floyd states "Correspondingly, I feel that I have been discriminated by Wegmans' Warehouse Management (some) and would like for these complaints to be placed on record. Some of the Wegman's Warehouse Management has a history of unjust treatment in which should be reviewed and documented accordingly."

Mr. Floyd's grievance does not meet the requirements for a valid grievance. Article 2 of the collective bargaining agreement sets forth the requirements for a grievance, and expressly states, "Any grievance shall be reduced to writing and submitted to the grievant's supervisor no later than fifteen (15) calendar days after the grievant knew or with the exercise of reasonable diligence could have known the facts giving rise to the grievance." Mr. Floyd references an attendance infraction on October 1st, 2022 and this grievance was turned in on October 25th, 2022. Grievance # 141 fails to satisfy the contractual requirements of a grievance and accordingly is denied.

A full investigation of the facts and circumstances surrounding this case determined there was no violation the Collective Bargaining Agreement including any practices related to forcing employees to work. Mr. Floyd was aware of the force prior to notifying the Team Leader he was leaving early. On this date no one else asked to leave early or was approved to leave early at or near the same time Mr. Floyd left. In fact several hours later only senior team members were offered early outs. As a result Mr. Floyd received the appropriate discipline as set forth in Exhibit A Attendance Policy.

Additionally, HR has attempted to meet with Mr. Floyd on numerous occasions to take his statement and begin a harassment investigation. On Friday 10/7/2022 HR met with Mr. Floyd to begin the investigation in which Mr. Floyd stated he wasn't ready, and he requested to meet on 10/14/2022. On Friday 10/14/2022 HR contacted Mr. Floyd and offered him time to review his file and take his statement that day and Mr. Floyd did not meet with HR. Mr. Floyd was also offered to meet at 11:30am on 10/17/2022 in which Mr. Floyd stated he would "talk to Kenny" and get back to you and he did not. We encourage Mr. Floyd to formally set up a meeting with Human Resources to review his employee file and fill out a harassment claim form at his earliest convenience to provide details surrounding his harassment complaint (including completing a harassment complaint form).

For the above reasons this grievance is denied.

Sincerely,

Brian Kohler
Distribution Operations Area Manager

Wegmans Food Markets

Corporate Office: 1500 Brooks Ave. • PO Box 30844 • Rochester, NY 14603-0844 • Phone: 585-328-2550 • wegmans.com

Attachment 2

**January 11, 2023, Complaint filed with the NYS Division
of Human Rights**



Lisa Jacobi <ljacobi.1227@gmail.com>

Fwd: We've received your submission

1 message

lamar floyd <floydlamar1970@gmail.com>
To: ljacobi.1227@gmail.com

Mon, May 13, 2024 at 2:38 PM

----- Forwarded message -----

From: **The NYS Division of Human Rights** <no-reply@mail.forms.ny.gov>
Date: Wed, Jan 11, 2023 at 3:02 PM
Subject: We've received your submission
To: <floydlamar1970@gmail.com>

Dear Lamar,

Your submission has been received by the NYS Division of Human Rights. You will receive further communication from DHR, via mail or email, detailing next steps within 45 days. Please collect any documents, emails, records, or evidence relevant to your complaint and be ready to provide them to our investigators at that time.

If you have further questions about the complaint process, please feel free to email us: info@dhr.ny.gov

Thank you for your time,

The NYS Division of Human Rights

dhr.ny.gov
888-392-3644

 **New York State Division of Human Rights Complaint Form_01112023_1673464766_63bf0bbe682096.57010851.pdf**
32K

New York State Division of Human Rights

Individual filing the complaint

Please provide the information requested below.

First Name

Lamar

Middle Initial

D

Last Name

Floyd

Street Address

116 Covington rd

City

Rochester

State

NY

Zip

14617

Are you completing this form for someone else?

No

Your complaint

Jurisdiction

Employment

Employment

Please specify where the discrimination occurred

Employment (including paid internship and domestic workers)

Are you currently working for the employer you are filing against?

Yes

Date of hire

03/05/2001

Position held or applied for

Ware house woker

For employment and internships, how many employees does this person/company have?

20 or more

Acts of alleged discrimination: What did the person/company you are complaining against do? Check all that apply

Harassed or intimidated me on any basis indicated here

Basis

Basis of alleged discrimination in employment:

Race/Color (because you are Asian, Black, White, etc.; includes ethnicity; includes traits historically associated with race such as hair texture or hairstyle)

Please specify race/color:

Afro American

You are filing a complaint against

Entity that discriminated against you:

Name of entity

WEGMANS ware house

Street Address

1500 brooks Abe

City

Rochester

State

Ny

Zip

14615

In what county or borough did the violation take place?

Monroe

Phone Number

585 429-3030

Email address

Fax Number

Company Website

Please provide the name, last name, and title of individual people who discriminated against you.

Roy winters

Jhon Mirr

Jim (HR) rep

Date of the most recent act of alleged discrimination

10/08/2022

Description of discrimination

Tell us more about each act of discrimination that you experienced. Please include dates, names of people involved, and other details. You must explain why you think these acts were discriminatory and how these acts are connected to the protected class (race, color, sex, disability, etc.) you selected previously.

I left wrk on force day tht means u have to say 2hr extending your shift

So my union doesn't recognize WEGMANS force the woker on the TV screen where we get are jobs for the day but WEGMANS keep bullying us to go by this tv screen but union doesn't acknowledge it so left wrk on 10-8-22 and by me leaving wrk I got a 1.point and 5-days unpaid !!

But on Dec-22-2022 a co-worker name Jeff kire did the same thing and Thu only give him 1.point and no time off But he is a white guy ! And I'm a black guy ! I fill like it was favoritism and racially motivated !!! Please help me get my 5-days of pay bac and stop WEGMANS management team from mis treating there employees 585 857 2089

Supporting Documentation

3B191135-0B90-4C8E-A583-2368450C3363.jpeg
2FF0D35B-9295-43BC-959C-A5A5BA16BDCB.jpeg
B27AFB91-9EFD-4181-90BA-87F2BF020B92.jpeg
3719360E-9C2B-4F8E-A59F-9C9982D46722.jpeg
E0F57C73-4A74-4106-AA38-73843DEC60E9.jpeg
0C156A9E-3CA8-41EF-A61A-D4F9A5C540E2.jpeg
5EEBF284-43FD-48FB-96E8-4BB49F505A00.jpeg

Declaration

Based on the information contained in this form, I charge the herein named respondent(s) with an unlawful discriminatory practice, in violation of the New York State Human Rights Law.

I have not filed any other civil action, nor do I have an action pending before any administrative agency, under any state or local law, based upon this same unlawful discriminatory practice. (If you have another action pending and still wish to file, please contact our office to discuss.)

Please initial:

Lf

I affirm under penalties of perjury, that I am the complainant herein; that I have read (or had read to me) the foregoing complaint and know the content thereof; that the same is true of my own knowledge except as to the matters therein stated on Information and belief; and that as to those matters, I believe the same to be true.

Lamar Floyd

Additional information

Your contact information

Email Address

floydlamar1970@gmail.com

Phone Number

585 857 2089

Mobile Phone

Special needs

I am in need of:

I do not need any special accommodations

Settlement/Conciliation

To settle this complaint, I would accept:

A letter of apology and 10-days of pay because

I went the company and seat down and told thm I was contacted human rights and was going to file a complaint and basically said, so what !!

Prior complaint

Did you report or complain about the discrimination to someone else?

No .

Other information

Were other people treated the same as you? How?

No !!

Were other people treated better than you? How?

Yes I

Attachment 3

**February 17, 2023, Letter from Harter Secrest & Emery
LLP to NYS Division of Human Rights regarding their
representation of Wegmans.**



Harter Secrest & Emery LLP
ATTORNEYS AND COUNSELORS

WWW.HSE.LAW.COM

RECEIVED
By AMR at 9:12 am, Feb 21, 2023

February 17, 2023

VIA E-MAIL

Julia B. Day, Regional Director
NYS Division of Human Rights
One Monroe Square
259 Monroe Avenue, Suite 308
Rochester, New York 14607

**Re: Lamar D. Floyd v. Wegmans Food Markets, Inc.
SDHR Case No. 10222287**

Dear Ms. Day:

This firm represents the Respondent, Wegmans Food Markets, Inc. ("Wegmans") in this matter involving current Wegmans employee Lamar Floyd. This letter is submitted in response to allegations of discrimination based on race ("Afro American") contained in the Complaint. Wegmans denies each and every allegation of unlawful conduct in the Complaint and specifically denies discriminating against Mr. Floyd in any manner because of race, or for any other unlawful reason. Any allegation in the Complaint that is not expressly addressed herein is denied.

As explained below, Wegmans issued Mr. Floyd an attendance infraction (1.5 points) and a Notice of Warning with a 5-day suspension for violations of Wegmans policies and work rules, including its union-negotiated Attendance Policy. Mr. Floyd's Complaint essentially challenges Wegmans interpretation and administration of the collective bargaining agreement that governs his employment. The Division is the wrong forum for such a complaint.¹ Accordingly, Wegmans respectfully requests that the Division dismiss the Complaint in its entirety with a finding of *No Probable Cause*.²

The Employer

Wegmans is a private corporation founded in 1916 with its headquarters located at 1500 Brooks Avenue, Rochester, New York 14624.

¹ The appropriate forum is through the grievance procedure set forth in the collective bargaining agreement. Notably, Mr. Floyd did grieve his suspension, which was denied after a full investigation. The grievance process is continuing.

² Wegmans reserves the right to amend its response or to present additional evidence based on developments in this matter.

Harter Secrest & Emery LLP
ATTORNEYS AND COUNSELORS

Julia B. Day
February 17, 2023
Page 3

four (4) hours into his scheduled shift and six and one-half (6.5) hours before the end of his forced extension. As a result, and in accordance with the CBA and the Attendance Policy, Mr. Floyd incurred 1½ infraction points for leaving early after being forced. In addition to the infraction points, Mr. Floyd was issued a 5-day suspension, also in accordance with the CBA and the Attendance Policy. Mr. Floyd was suspended without pay from October 8, 2022 through October 13, 2022 and returned to work on October 14, 2022.

Mr. Floyd's Complaint

Mr. Floyd's allegations implying that Wegmans administers its Attendance Policy inconsistently and/or in a manner that discriminates against "Black" employees are baseless and patently untrue. The individual identified in the Complaint as "Jeff Kier"⁴ is not an appropriate comparator as he was not similarly situated to Mr. Floyd. Like Mr. Floyd, Mr. Kier received 1½ infraction points for leaving early after a force on December 22, 2022. However, Mr. Kier did not receive the 5-day suspension in addition to the infraction points in error due to the extremely busy holiday season. Wegmans has issued the 5-day suspension (in addition to the 1½ infraction points) to employees who leave early during forced shifts without regard to race. Specifically, Wegmans has issued the 5-day suspension to white employees leaving early during a force.

Any allegation not specifically addressed in this response is denied.

Summary and Conclusion

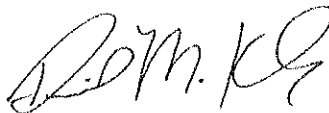
The Complaint filed by Mr. Floyd is without merit and should be dismissed in its entirety. Wegmans has consistently applied the Attendance Policy to its employees in accordance with applicable law and the collective bargaining agreement without regard to race.

Based on the foregoing, Wegmans respectfully requests that the Complaint be withdrawn or, alternatively, dismissed with a finding of *No Probable Cause*.⁵

If you are in need of any additional information, please contact the undersigned.

Respectfully submitted,

Harter Secrest & Emery LLP



David M. Kresock
DIRECT DIAL: 585.231-1368
MAIL: DKRESOCK@HSBLAW.COM

cc: Ellen P. Lynch, Director of Labor & Employment Law and Assistant Counsel

⁴ Wegmans assumes Mr. Floyd is referring to former employee Jeff Kier.

⁵ If a rebuttal or any other documents are submitted by Mr. Floyd in this matter, please provide me with a copy of any such documents.

Exhibit 1

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Q.1

Our Equal Employer Opportunity Statement

Wegmans is an equal opportunity employer. We recruit, hire, train, and promote without discrimination due to age, race, color, religion, sex, sexual orientation, national origin, citizenship, disability, military leave or veteran status, genetic information, or any other status protected by applicable federal, state or local law.

Exhibit 2

EXHIBIT A ATTENDANCE POLICY

The parties recognize that consistent attendance is an essential requirement of every job under the Chain Grocery Warehouse Agreement. Employee absenteeism, tardiness, and leaving early disrupt the workings of the business and place an additional burden on employees who come to work consistently and on time. Excessive absenteeism, in addition, affects an employee's job performance and may jeopardize continued employment. Excessive excused absences, early departures, and tardiness or a pattern of absence/tardiness/early departures, even if documented, may lead to discipline outside of the schedules set forth below. An employee who submits a forged or altered document to excuse an absence or tardy arrival will be terminated. Accordingly, absenteeism, tardiness and/or leaving early will result in an infraction(s) under this Attendance Policy as follows:

A. Proper Call-in Procedures. All employees, individually, must call the Customer Satisfaction Center at (585) 429-3909 at least one hour before their scheduled starting time each day that they are to be absent. An employee, individually, must call the Customer Satisfaction Center before their scheduled starting time each day that they are to be tardy. When calling, the employee must provide at least the following information: (1) employee name; (2) employee number; (3) employee work department; (4) date of absence; and (5) reason for absence (e.g., FMLA, NYFL, or personal). If an employee does not call the Customer Satisfaction Center within the time period set forth above, he or she will receive one-half (1/2) infraction point under the attendance policy set forth herein (in addition to any points related to the employee's absence). The parties understand and agree that communication to any supervisor(s) of an employee's absence without following the call-in procedures set forth above shall be considered a no-call/no-show under the Attendance Policy.

B. Pre-Scheduled and approved absences do not count as attendance infractions under the Attendance Policy. Each day of unscheduled absence will result in one (1) infraction point. An unexcused absence of three (3) or more consecutive days for the identical reason shall count as two (2) infraction points only if the employee supplies a valid medical note from the employee's (or the immediate family member's) health care provider at the start of their first shift back to work. Failure to provide a valid medical note at the start of the employee's first shift back to work (prior to performing any work) will result in each day out of work being deemed an individual absence, and result in one (1) infraction point per day of absence.

C. For purposes of this policy, "a valid medical note" must include the following:

- The medical note must document that the absence was due to the illness or injury of the employee or the employee's immediate family member.
- The medical note must state that the employee (or the immediate family member) was seen in the health care provider's office. For the illness or injury of an employee, the medical note must also state that the employee was unable to work for medical reasons on each day of the employee's absence.

- The medical note must be an original and be signed by the employee's (or the immediate family member's) health care provider.

- The medical note must document that the health care provider saw the employee (or the immediate family member, if applicable) during the period of the employee's absence.

- Notwithstanding any other term of this Agreement to the contrary, for purposes of this Attendance Policy the term "immediate family member" shall mean the employee's child, spouse or significant other.

D. Each day of no-call/no-show will result in two (2) infraction points. Three no-call/no-shows will be deemed a voluntary resignation, regardless of the number of infraction points the employee has at the time of such absences and the employee's employment will be immediately terminated.

E. **LEAVING EARLY.** Each and every instance of leaving early without prior approval will result in infraction points as set forth below. However, requests to leave early which are approved by the Company in advance will not result in infraction points. For purposes of this policy, "leaving early" shall mean the employee's departure from work before the time approved by the Company.

Any instance of leaving early:

- After working less than one-half of the employee's scheduled shift will result in one (1) infraction point.
- After working at least one-half of the employee's scheduled shift will result in one-half (1/2) infraction point.
- Without performing any work (defined as completing any assigned task, not just punching in and attending crew out) shall receive one and one-half (1 1/2) infraction points.

- After being forced to work or leaving work without notifying management shall result in one and one-half (1½) infraction points and shall also result in additional discipline up to and including termination of employment.

F. ARRIVING LATE. The parties agree that employees who are late for work cause disruption to operations. For purposes of this policy, "tardiness" is defined as clocking in and reporting to work at any time after the employee's scheduled start time (including any scheduled early overtime).

Accordingly:

- Employees who properly call in and notify the Company that they will be late and then report to work less than halfway through their scheduled shift, will be considered tardy and will receive one-half (1/2) infraction point for each such instance.
- Employees who fail to properly call in and report to work less than halfway through their scheduled shift, will be considered tardy and will receive one (1) infraction point for each such instance.
- If the employee arrives to work more than halfway through their scheduled shift, the employee shall receive one and one-half (1.5) infraction points for each such instance (even if the employee followed proper call-in procedures).
- Employees who call the Customer Satisfaction Center to state that they will be late, but who do not report to work, will receive a no call, no show and receive two (2) infraction points for each such instance.

A tardy employee will be assigned work based upon the work available at the time of the employee's arrival and shall not displace any employee who has already chosen an assignment.

- G.** Employees are permitted to utilize unused split time from their Paid Time Off (PTO) accrual to receive compensation for a day of absence. However, such use of PTO does not excuse the absence, and the employee is subject to discipline under this Attendance Policy.

H. The Attendance Policy disciplinary procedure is as follows:

0.5 - 1 INFRACTION POINT in an attendance year will be documented.

1.5 - 3 INFRACTION POINTS in an attendance year will result in a written Conversation Note.

3.5 - 8.5 INFRACTION POINTS in an attendance year will result in a Notice of Warning.

9 - 9.5 INFRACTION POINTS in an attendance year will result in a documented final Notice of Warning.

10 INFRACTION POINTS in an attendance year will result in immediate termination of employment.

For purposes of this Attendance Policy, the term "attendance year" shall be defined as September 1 through August 31.

Absences covered under the Family and Medical Leave Act (FMLA), New York Paid Family Leave Law (NYPFL), NYS Disability or NY Workers Compensation will not count as infractions under this disciplinary procedure, provided proper paperwork has been provided to Wegmans within the required time period and the employee provides proper notice of such leave as described above.

Attachment 4

February 21, 2023, Letter to Mr. Floyd from NYS Division of Human Rights advising that Wegmans responded, and Mr. Floyd had until March 8, 2023, to respond.



Division of
Human Rights

KATHY HOCHUL
Governor

MARIA L. IMPERIAL
Commissioner

February 21, 2023

Lamar D. Floyd
116 Covington Rd
Rochester, NY 14617

Re: Lamar D. Floyd v. Wegmans Food Markets, Inc.
Case No. 10222287

Dear Lamar D. Floyd:

Attached is a copy of the respondent's written response to your recently filed complaint. At this time, we are asking you to review the attached and submit a written response (known as a "rebuttal"), in order to further the investigation of your case. **Please include your case number on your submission and submit your written rebuttal to us by March 8, 2023.** The Division will not extend the time for your rebuttal, unless good cause is shown in a written application, submitted at least five (5) calendar days prior to the time the rebuttal is due.

You may submit your rebuttal by mail, fax or via e-mail to roc.syr@dhr.ny.gov. Email attachments should be in *.pdf, *.doc, *.docx or *.xlsx formats. Please contact our office to discuss if you have electronic files you wish to submit in other formats. If you submit by email, do not send additional hard copies through the mail unless you are specifically requested to do so by Division staff.

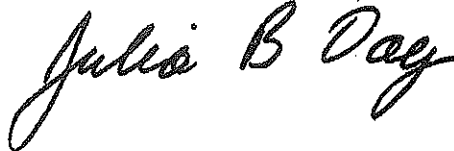
If we do not hear from you, we will assume you have nothing to add. The case may then be decided on the basis of what is in the file.

Protection of personal privacy: You may wish to submit documents in support of your complaint. The Division observes a personal privacy protection policy consistent with Human Rights Law § 297.8 which governs what information the Division may disclose, and the N.Y. Public Officer's Law § 89 and § 96-a, which prohibit disclosure of social security numbers and limit further disclosure of certain information subject to personal privacy protection. Please redact or remove personal information from any documentation submitted to the Division, unless and until the Division specifically requests any personal information needed for the investigation. The following information should be redacted: the first five digits of social security numbers; dates of birth; home addresses and home telephone numbers; any other information of a personal nature. The following documentation should not be submitted unless specifically requested by the Division: medical records; credit histories; resumes and employment histories. The Division may return your documents if they contain personal information that was not specifically requested by the Division. If you believe that inclusion of

any such personal information is necessary to support your complaint, please contact me to discuss before submitting such information.

Please remember that you must notify us immediately, in writing, of any change in your address or telephone number. Thank you for your cooperation.

Very truly yours,

A handwritten signature in black ink that reads "Julia B. Day". The signature is written in a cursive style with a large, stylized "J" and "D".

Julia B. Day
Regional Director

Attachment 5

Text Messages between Mr. Floyd dating back to January 13, 2023, introducing himself to Mr. McMurry and continually asking for updates on the case.

Lamar Floyd

585 857 2089

racial discrimination, against
Wegmans warehouse

Please and thk u

Fri, Jan 13 at 5:13 PM

WEGMANS ware house

Roy winters or
Jhon Muirr

585 429 3030

Thu, Jan 19 at 1:32 PM

Can I call you later?

Yes please

I called

Waiting to hear back

Do you have their direct numbers?

No but whn u call I'll call and get sum

is going by and I felt threatened for my job, so I went and found a new job after wrking for WEGMANS for 23yr and I'm very on Happ !

I've called

Let's see if they respond today

Ok whts the step if thy don't call bac ?

Write a letter

It's a slow process

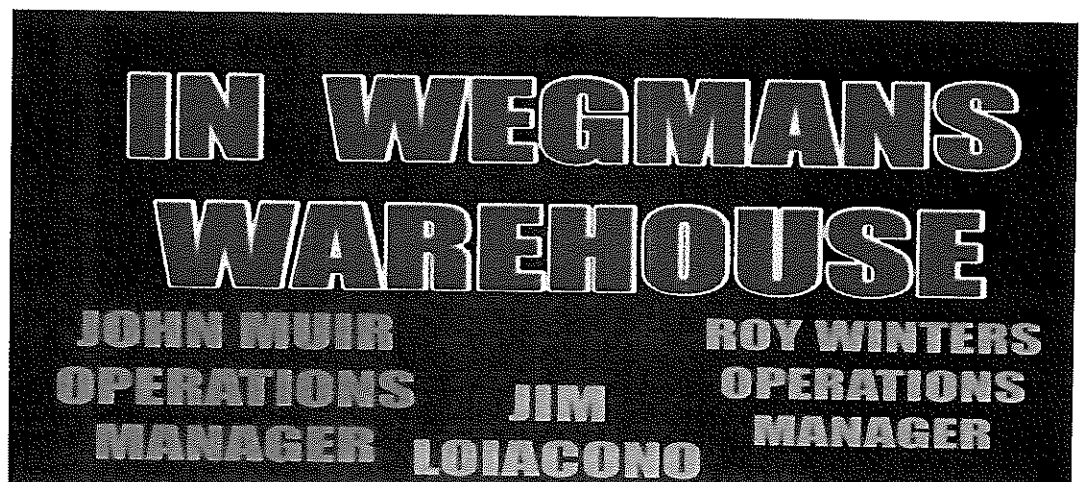
Fri, Jan 20 at 4:12 PM

3:20



Photo

Done



I had my sign made I bet if I would
hav start a protestant thy would hav
call u bac by now !!! Lolol
But I understand

Fri, Jan 20 at 5:17 PM

I do like the sign

Lololoo

U want hr fax number?

Title and fax might help

Jim Loiacono

6:05

LTE

< Search

Edit

Hi

H R Jim Wegmans In office

message

call

\$
pay

home
(585) 452-1146

work
(585) 464-4647

Notes

No one there on Saturday so Monday
May wrk for sure

Mon, Jan 23 at 5:10 PM

Good after noon did you get a call
back today or a fax out ??

Mon, Jan 23 at 7:05 PM

I'll call again tomorrow

Last try

Last try ? Thn Wht ?

Write a letter to corporate

Please just write the letter after
wrking their 24yr and thm make fill
like my job was in jeopardy with
thm !!

Fri, Jan 27 at 6:49 PM

Hello hay what's going on ??

Mon, Jan 30 at 5:21 PM

I'll draft up a letter

Just called him again

Left a message

Time is tic u did want fax it ??

Sure

Please and thk u we know thy play game !!

Wed, Feb 1 at 12:43 PM

Good after noon we get a answer or fax out ???

Fri, Feb 3 at 1:40 PM

Hay good after noon whts the word ?

Fri, Feb 3 at 5:14 PM

Nothing

I'll call back

around !!

Mon, Feb 6 at 9:11 AM

Gm ok there is a lot going in WEGMANS ware tht I hav a few guys tht want seat down with u ant these problems with favoritism and racial discrimination. Let know wht lawyer say please and thk u !!

Can you set up a netting?

Meeting

I'm out of town this week

For next week?

I'd love to meet all you guys and create a real plan

Ok well I'll let thm know ! Wht day next wk time and address?? Any day wrk for me but 9a because I hav to wrk at noon
And u hope we hear sum and we don't hav to wait a other wk pleas

wrk at noon

And u hope we hear sum and we
don't hav to wait a other wk pleas

Mon, Feb 6 at 10:39 AM

Did their lawyer call you bac ??

Mon, Feb 6 at 12:14 PM

No

I'll try again.

Chris Rosen
Brian Kohler
And thy spoke to
Jhon Mirr
Roy winners
And told them how I felt about racial
discrimination. By giving me five
days and 1 point And Jeff Kire did
the same thm I did and he only got 1
point and no time off

Mon, Feb 13 at 5:06 PM

Ur on vac right ??

Tue, Feb 14 at 8:57 AM

Gm call me whn u can please

Tue, Feb 14 at 12:06 PM

Yes.

Tue, Feb 14 at 1:31 PM

Can I call you later?

Ok deal

Fri, Feb 17 at 2:57 PM



Hay did it make the time line ??

You won't get the banked vacation this week.

Can thy cut me Chk I'll pick it up ??

I'll ask tomorrow and let you know.

Please and thk Gn

Friday, Feb 2, 2024

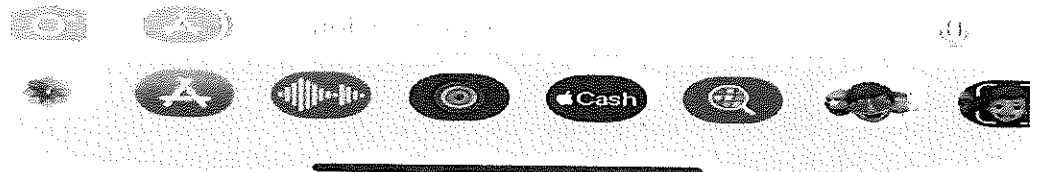
You can pick up a check at market street office front desk Friday after 2pm for 360 hours of banked vacation. 9 weeks. You also have another 40 of vacation that will be paid in regular payroll - you will see that next week.

Can u please call me

I will call you later.

Well can u make a call tht I can com pick it up at 11a on Friday please I hav doctors appointment at 145p on Friday

Please and thk u



Sat, Feb 18 at 10:05 AM

My son has a volleyball tournament I forgot about

I'm sorry

I'll still try and make it

But it might be right

Can I call you later?

Mon, Feb 20 at 1:36 PM

Good after noon so now Wht ?? Are next move

Tue, Feb 21 at 7:53 AM

Can you tell me what you want from them?

They gave the five days

But I need to make a specific demand

You tel me because they made me feel like this was very racially motivated by forcing me to leave the company because I was a union steward, and I'm a outspoken person And why thy did pay me be for I felt like my job is in jeopardy !!! 23yr I put in to WEGMANS racial discrimination, is against the law u tel me how much tht worth !!!!

motivated by forcing me to leave the company because I was a union steward, and

I'm a outspoken person

And why thy did pay me be for I felt like my job is in jeopardy !!! 23yr I put in to WEGMANS racial discrimination, is against the law u tel me how much tht worth !!!!

I have a Jordan Brown and Kenny Chung want to talk too u as well there having want their number or you want me to give them your number

I'm 52 I would hav retire 65 so thy oh me at less sumthg !!!

Give them my number

Ok and wht u thking abt my case ?? see wht number thy offering to make us go way

I pass ur number on to the guys

Wht u thk

Hay tel thm 60k or we go to court for racial discrimination !!!! How much will u make ? And tht for me leav be for I turn 65 ? Wht u thk ?

How much a year did you make? With benefits

75k yr more with over time

Tue, Feb 21 at 7:06 PM

7:05

5G



Good morning!

Attached is a copy of the respondent's written response to your recently filed complaint. Please note that your rebuttal is due in our office no later than March 8, 2023.

You can contact this office by either replying to this email or calling us at (585) 238-8250.

Ayleen M. Rodriguez
Agency Program Aide

Wed, Feb 22 at 1:20 PM

Hayyy good after noon

Can u please call me I hav a email from the human rights and need help responding please

I can't call today. I'm swamped.

But I'll try and get a hold you tomorrow

What are they asking?

Well WEGMANS basically Wegmans said that they didn't suspend Jeff Kire Co because of a busy holiday schedule Wegmans admitted that he didn't do it for race but I never heard nothing about that and when I went to them about the situation, they never said they didn't suspend Jeff because of the holiday sound like bullshit. Please call me tomorrow or text me your email and I can send it

hire Co because of a busy holiday schedule Wegmans admitted that he didn't do it for race but I never heard nothing about that and when I went to them about the situation, they never said they didn't suspend Jeff because of the holiday sound like bullshit. Please call me tomorrow or text me your email and I can send it to you. Maybe you can respond and where we at in the situation



pdf

**RP Position statement
10222287.pdf**

PDF Document - 1.9 MB

Wed, Feb 22 at 4:05 PM

Ok my union is writing me letter abt this whole situation ttyl

Tue, Feb 28 at 9:25 AM

gm i know ur very busy and I'm taking u really dont hav the time to help me nice meeting you and I'll move forward alone Thks again

Wed, Feb 22 at 4:05 PM

Ok my union is writing me letter abt this whole situation ttyl

Tue, Feb 28 at 9:25 AM

gm i know ur very busy and I'm taking u really dont hav the time to help me nice meeting you and I'll move forward alone Thks again

Fri, Mar 3 at 11:59 AM

Call me if you can

Fri, Mar 10 at 2:25 PM

Good after noon Wht going on ?

Fri, Mar 10 at 4:46 PM

Waiting on Wegmans

Wht ur letter look like ?

Fri, Mar 10 at 6:45 PM

after such a long time he felt no longer comfortable at Wegmans or appreciated by leadership--even forced out for voicing his concerns. He has documented these events and provided to me extensive information of how he was treated differently from his white colleagues, including the incident regarding overtime that finally led to his departure.

After considering the legal costs and time involved in pursuing this matter further, however, he is willing to settle the matter out of court for the sum of \$200,000, subject to a binding final agreement approved by Mr. Floyd. This amount is based on the following breakdown of damages:

1. Lost wages: Mr. Floyd made approximately \$70,000 a year with overtime and benefits. Given his current age, he could have worked for many more years at Wegmans. Indeed, he intended to do so.

ongoing mental stress and loss of confidence from the events leading up to his departure and the events surrounding it, for which he is seeking counseling. He misses his work environment and many of his close friends at Wegmans.

3. Punitive damages: Given the level of awareness by Wegman's leadership regarding violations of union standards and overtime rules, we would seek punitive damages in court.

In addition to the monetary compensation, Mr. Floyd also requests that Wegmans provide him with a written reference that confirms his employment dates and the positions he held during her tenure. We hope this will help Mr. Floyd secure future employment opportunities and will help to mitigate some of the damages caused by his forced departure.

I would like to reiterate that the

a result of the discrimination and wrongful treatment Mr. Floyd endured while employed at Wegmans. We believe this settlement amount is fair and reasonable given the circumstances.

Please let me know if you are willing to accept this settlement proposal, or if you would like to negotiate a different settlement amount. We hope we can come to an amicable resolution of this matter, and I look forward to hearing from you soon.

Sincerely,

Nate

Ok it's fair but Wht WEGMANS time line to respond to us ?

I'll follow up Monday

Thu, Mar 16 at 3:03 PM

Hayy Whts the word

Morning

They say they gave an update

Ok how long do we ply this game with thm

??

Monday I'll know if they're serious

Serious?? Abt not pay me ? Or you making a court date ?

??

Sat, Mar 18 at 3:38 PM

I'll make a court date if they don't make an reasonable offer

Cool

Thu, Mar 30 at 7:35 PM

Hay can I post my sign on my Facebook page ??

Ok

Wed, Apr 5 at 11:20 AM

Good after noon Wht thy talking
abt ??

Wed, Apr 5 at 1:48 PM

Nothing yet

Ok I'll be out town til Monday ttyl

Tue, Apr 18 at 2:11 PM

Hay good after noon no word ??

Wed, Apr 26 at 9:34 AM

Hay gm Whts the word

Wed, Apr 26 at 3:42 PM

Hay gm Whts the word ???

Thu, Apr 27 at 5:05 PM

Hay I get ur busy but please let me

Update you tomorrow

Working on it

Ok thk u I appreciate your work

Mon, May 1 at 12:54 PM

Good after noon whts the word ??

Mon, May 1 at 6:28 PM

???

Tue, May 2 at 9:36 AM

I'll update you today at 3

Gm Ok thk u

Tue, May 2 at 6:01 PM

Hay good evening Wht thy talking abt
call me please

Tue, May 2 at 8:54 PM

It was a productive conversation. I
will call you tomorrow.

Affiliated with the International Brotherhood of Teamsters

Nathaniel White
Illustrations: Nathan

John M. Fagan
Executive Director

CLAY MASONRY
Practical

Mr. Van Pe...

EMPLOYEE ABSENCE TRACKING FORM						1770011
Emp. No.	First Name	Last Name	Department	Location	Date	Time
<div style="display: flex; justify-content: space-between;"> Emp. No. _____ First Name _____ Last Name _____ Department _____ Location _____ Date _____ </div>						<input type="checkbox"/> FMLA complete (attach if FMLA active)
Other information provided by employee:						
Is this for an approved FMLA? Yes (complete below) No - Complete below and let boss know to follow up with employee						
<div style="display: flex; justify-content: space-between;"> <div> FMLA for: <input type="checkbox"/> Self <input type="checkbox"/> Family Member <input type="checkbox"/> Doctor Appointment <input type="checkbox"/> Doctor of Time <input type="checkbox"/> Reduced Hours <input type="checkbox"/> Sick Leave <input type="checkbox"/> Other </div> <div> FMLA for: <input type="checkbox"/> Reduced Hours <input type="checkbox"/> Sick Leave <input type="checkbox"/> Other </div> </div>						
Amount of FMLA Time Taken: <input type="checkbox"/> Full Day <input type="checkbox"/> Half Day <input type="checkbox"/> Less than Half Day						
If FMLA, Family Member for Full Day FMLA (provide name and relationship): _____						
*FMLA/FPL will run consecutively in the FPL record instead permitted by law.						
PR ONLY:						
FMLA/FPL time taken and logged in KARMA: <input type="checkbox"/> Self <input type="checkbox"/> Yes, other (complete this section) <input type="checkbox"/> No (complete Unexcused section below)						
Excused Other: _____						
Exempted Other: _____						
Noted by: _____						
Noted Date: _____						
Spends of Resolving Documentation: _____						
If a Rule: _____						
Absenteeism (attendance or failure to follow proper call-in procedures) New Type: _____						
Written Warning: _____						
On 03/28/2022, I, Floyd, Lamar D was tardy for hours scheduled shift (0.5) and did not follow proper call-in procedure (0.5). As a result, I was given a written warning. This is my first written warning.						
This is my first written warning.						
As an employee unable to make it to work for a scheduled shift (including scheduled overtime), must call the Customer Satisfaction Center at least 7 hours before the start of the shift. An employee who fails to do so will be subject to disciplinary action.						
The Attendance Policy (disciplinary process) is as follows:						
One-half to One (1-1.5) infractions points in an attendance year will be considered on the employee's attendance record.						
One and one-half to Three (1.5-3.0) infractions points in an attendance year will result in a written disciplinary notice.						
Three and one-half to Eight and one-half (3.5-8.5) infractions points in an attendance year will result in a written notice of termination.						
Nine to Fifteen and one-half (9-15.5) infractions points in an attendance year will result in a final notice of termination.						
The 15.5 infractions points in an attendance year will result in immediate termination of employment.						
NOTICE OF WARNINGS TO EMPLOYEE:						
Your job is to regularly for the mentioned notice above. Any further violations of Workplace Policies & Work Rules, or any other performance related issue that may result in disciplinary action, will result in further disciplinary action, up to and including termination.						
Please contact HR at 1-800-888-8888 for more information regarding this notice. This notice may include some information that may be confidential. Please do not share this information with anyone else.						
Signature: _____ Emp. No. 107215 Date 3-30-21						
Signature: _____ Emp. No. 13283 Date 3-30-21						
Signature: _____ Emp. No. 169253 Date 3-30-21						

let me soon as I can go protest with
my sign

Ok, let's fight

I'm ready to dance 100 100

I had a meeting Chris Rosen and
Brian Kohler
And spoke
Jhon Mirr
Roy winners
And told them how I felt about racial
discrimination. By giving me five
days and 1 point And Jeff Kire did
the same thm I did and he only got 1
point and no time off

I hear ya

Fri, May 19 at 11:43 AM

Hay good after noon whts going
on ???

Wed, May 24 at 10:51 AM

please and thk u

Tue, May 30 at 8:33 PM

Ok whts going on like I been txt you

I'll call tomorrow

Ok please

Wed, May 31 at 12:51 PM

Good after noon call me whn u can

Wed, May 31 at 4:37 PM

?????

Wed, May 31 at 7:14 PM

Look I know ur a very busy man but u ask me to trust you and all I'm ask for is sum information on my case Wht the bigg secret Wht going on Wht thy talking abt

Whr we stand I don't move like this I'm allways on top of my business just communicate !

is sum information on my case wht
the bigg secret Wht going on Wht thy
talking abt
Wht we stand I don't move like this
I'm allways on top of my business just
communicate !

Mon, Jun 5 at 12:24 PM

Black employee wins \$11.25 MILLION in race discrimination case

Why it DOESNT matter if the
company says she was late


TikTok
@attorneyryan

**Quinox Fired
ing a Black**

I'll call you tomorrow

Wht time please

After I talk to wegmsns

They gave rejected your final offer

I think it's a mistake not to settle

In law, damages, have to be
commensurate to the damage
actually suffered

We are going to have to prove you
were entitled to that amount of
damages

You are making money, as much as
you made before

Please keep that in mind

Courts will calculate what we can
prove you were actually damaged

Well after u talk to thm call me and I'll

I'm trying to arrange an arbitration

As I explained, this will not be quick

Unless you are willing to settle, they will stretch this out indefinitely

My last conversation per your instructions was for 150k

I'm waiting to hear back

In the meantime, they have demanded mediation.

So we are working in that

To win in court, we will need to exhaust such remedies

I'll update you as soon as I hear back

Np ok tht all I need is just sum feed bac ok and thk u and thk u ttyl we got this Gn

Good night

me can't txt it

Thu, Jul 6 at 10:41 AM

On Phon with WEGMANS call in now
518-549-0500
Code 96085620

911

For what?

Thy call me

Tell them you are represented by an attorney

I am literally sitting with another client

But they should call me

Right !

Please consider that you are being recorded

Tell them to call me directly

Do not respond. DO not make your case

Just listen to them

But remember you are. Being recorded

Take notes

Remind them, however, that they need to call me

He said u never sent him a letter for u taking my case

Is this their attorney?

Who is this

Tell them I am repenting you

That's all you need to say

Both hum right

Remind them, no matter what, that I am representing you

Do not justify your position

Do not try and explain your position

I have had plenty of correspondence
with their lawyer

Please do not try and win an
argument with them now

Ok

Act like you are dealing with a cop

You have the right to remain silent

I just want to see what the heck they
are trying to do

So gather the info and stay quiet

I just told thm to call u

Good

Call me please whn ur done ttyl

OK

Human rights guy want you to call him

Wed, Jul 12 at 10:47 AM

Hayyyyy Gn this still calling because you not sent over Wht he needs Wht going on !!!

Scott rogacki

585-238-8253

Human rights guy want you to call him Scott rogacki

Tue, Jul 18 at 4:57 PM

Hayy can u call me whn u get a min whts going on ???

Wed, Jul 19 at 12:38 PM

Sorry, I can't talk right now.

Ok call later please

Thu, Aug 2 at 1:19 PM

file soon.

Wed, Aug 9 at 3:44 PM

Call me whn

Can

Why? Did that lawyer try to get a hold of you? Because I called him today and told her we're going to file

I had miss call and tht number look like it was from WEGMANS ? Don't know no message was left

But np file it asap soon as u can I'm going out town Fri-11 to fri -18

I'll update you soon. I wanna talk to him. I don't know why he calls you every time I call him.

Well I'm not sure it was but the number look like a WEGMANS number I thought ok but I'll talk u next wk

right ? And Jordan brown is asking me abt you for his case ???

Wed, Aug 16 at 9:53 AM

Gm can u call me

Wed, Aug 16 at 8:28 PM

Let's talk at 10 tomorrow?

10am ok

Thu, Aug 17 at 10:13 AM

You around?

Yes call

Ur Phon going to voicemail

I been seating here for hour for ur phone tht u arranged and no call and hope everything is ok but this is not cool just call me be for u lay down I wrk from 12p to 8p but can after 2p to 745p !!

Want to try an alternative number?

Yes

Ur silence is on

11:25



R



Racial discrimination, lawyer

phone tht u arranged and no call and hope everything is ok but this is not cool just call me be for u lay down I wrk from 12p to 8p but can after 2p to 745p !!

Read 11:12 AM

I don't know what's going on with the phones. I called. Will call again later? Want to try an alternative number?

Yes

Delivered Quietly

Ur silence is on

Racial discrimination, lawyer has notifications silenced
Notify Anyway



WhatsApp



Q W E R T Y U I O P

A S D F G H J K L

↑ Z X C V B N M ↵

123



space

return



U can. call now ?

I Lamar Floyd, feel discriminated by Wegmans for being an advocate for employees. On October 7th, 2022, I was suspended without "just cause". On October 1st, 2022 I verbally communicated with Team Leader Paul Trapasso, that I would be taking a "leaving early" before getting forced. Later that day before the end of shift, management unforced some employees. I believe I should have gotten a 1/2 point deduction per contract Attendance Policy Exhibit A; not a 5 day suspension. It was management's poor planning of how much labor was needed for 10/1/2022 as there was no need to force the entire building. Per agreement, the crew out tool was designed to relief time wasted on crewing out only; not with intention to force.

Around mid-May 2022, Sean Pubman informed me to put both hands on the Jack.

On June 11', 2022, I got into a forklift accident. Department Manager Cam

should be reviewed and document

Thu, Aug 17 at 7:09 PM

I see this. I am working on the complaint.

Mon, Aug 21 at 10:24 AM

Just a quick update. I am traveling this week, but working on your complaint. I sent it around to my colleagues for feedback. I will have an update for you this week.

Thk u but please turn the heat up whn u get please and thk u ttyl

Edited

Tue, Sep 12 at 2:56 PM

Hayyy whts going on

Tue, Sep 12 at 7:27 PM

Sorry, I can't talk right now.

I know ur busy but u know I like to

know. Whte crine on and Wht

Thu, Sep 14 at 9:51 AM

I know ur busy but u know I like to know Whts going on and Wht WEGMANS talking abt like ain't no way thy havnt said nothing by now ??

You got to communicate with me !!

Thu, Sep 14 at 3:33 PM

I'm gonna send you a draft complaint. I'm not gonna talk to them any further because they don't wanna talk. I think we should file a notice of claim with them and then go to the federal courts. So I'm working on that now and I'll get it to you as soon as I can.

Ok Tht fine but from this just keep moving forward!!!! Let stop ply games please and thk u I know it's going to take time but if we push more we may get this over with

Wed, Sep 20 at 6:22 PM

Tell me when you can talk

Now

Mon, Sep 25 at 4:26 PM

Hayyyy

Tue, Sep 26 at 12:20 PM

Did u get tht paper wrk in ??

Wed, Sep 27 at 2:16 PM

Helloooo

Did u turn the paper wrk in

Thu, Sep 28 at 8:06 PM

No. It's being reviewed by my colleagues

Fri, Sep 29 at 9:54 AM

Ok I got a letter from human rights in your car to the human error and I have 15 days to object. Please call

Fri, Sep 29 at 5:40 PM

Send me the letter

Human Rights

NEW YORK STATE
DIVISION OF HUMAN RIGHTSNEW YORK STATE DIVISION OF
HUMAN RIGHTS on the Complaint of

LAMAR D. FLOYD,

Complainant,

v.

WEGMANS FOOD MARKETS, INC.,

Respondent.

DETERMINATION AND
ORDER AFTER
INVESTIGATIONCase No.
10222287

Federal Charge No. 16GC301435

On 1/13/2023, Lamar D. Floyd filed a complaint with the New York State Division of Human Rights ("Division") charging the above-named respondent with an unlawful discriminatory practice relating to employment because of race/color in violation of N.Y. Exec. Law, art. 15 (Human Rights Law).

After investigation, and following opportunity for review of related information and evidence by the named parties, the Division has determined that there is NO PROBABLE CAUSE to believe that the respondent has engaged in or is engaging in the unlawful discriminatory practice complained of. This determination is based on the following:

Investigation did not disclose sufficient evidence to support the allegations of unlawful discrimination that are contained in the complaint. Investigation showed Complainant, who is Black/African American, was hired around April 2001 to work in Respondent's Distribution Warehouses. The record shows while Complainant generally asserts Respondent harassed him and disciplined him more severely than his White counterparts, there was insufficient evidence to support this assertion. Investigation revealed that on 10/1/22, Complainant was scheduled to work 5:00 a.m. until 1:30 p.m., and after he arrived, he learned that he would be forced to work two additional hours. The record reflects that Complainant left early, shortly after 9:00 a.m., he did not agree with how he was informed of being forced. Furthermore, investigation revealed that per the Collective Bargaining Agreement and the Attendance Policy, Complainant was subjected to a 1 ½ point infraction and a 5-day unpaid suspension. While Complainant asserted he was disciplined more severely than a White colleague, Jeff Kier, who received only a 1 ½ point infraction for similar behavior on 12/22/22, Respondent maintains that this was human error.

...under Title VII of the Civil Rights Act of 1964, Enforcement of the aforementioned law(s) is the responsibility of the U.S. Equal Employment Opportunity Commission (EEOC). You have the right to request a review by EEOC of this action. To seek review, you must request it in writing, within 15 days of your receipt of this letter, by writing EEOC, New York District Office, 33 Whitehall Street, 5th Floor, New York, New York 10007. Otherwise, EEOC will generally adopt our action in your case.

The complaint is therefore ordered dismissed and the file is closed.

PLEASE TAKE NOTICE that any party to this proceeding may appeal this Determination to the New York State Supreme Court in the County wherein the alleged unlawful discriminatory practice took place by filing directly with such court a Notice of Petition and Petition within sixty (60) days after service of this Determination. A copy of this Notice and Petition must also be served on all parties including General Counsel, State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. DO NOT FILE THE ORIGINAL NOTICE AND PETITION WITH THE STATE DIVISION OF HUMAN RIGHTS.

Your charge was also filed under Title VII of the Civil Rights Act of 1964. Enforcement of the aforementioned law(s) is the responsibility of the U.S. Equal Employment Opportunity Commission (EEOC). You have the right to request a review by EEOC of this action. To seek review, you must request it in writing, within 15 days of your receipt of this letter, by writing EEOC, New York District Office, 33 Whitehall Street, 5th Floor, New York, New York 10007. Otherwise, EEOC will generally adopt our action in your case.

Dated: **SEP 26 2023**
Rochester, New York

STATE DIVISION OF HUMAN RIGHTS

By:

Julia B. Day
Julia B. Day
Regional Director

And whts ur plan

Thy call it a human error !!!

Hello

Sun, Oct 1 at 2:45 PM

Ok today is Sunday u ask me to send you this letter to you on Friday and I ask you whts ur plan and u never answered !!

ask you whts ur plan and u never answered !!

If we don't start communicating more this may not wrk out for me I like communicating and come Tuesday morning I'll be going to Supreme Court to appeal this case to the best of my knowledge. !!

Sun, Oct 1 at 4:25 PM

Lamar, I told you should file a civil action. That's what I was working on. You can file whatever you want. I'm not sure what lawyers respond on their personal cell phone for free on Sunday, but you continue to harass me and ignore my advice. If you want to file a civil action, we can discuss. But as I have explained, this is a methodical, deliberate process. You can't beat a billion dollar company by winging it.

Ok fine just touch base with me ttyl

Thu, Oct 19 at 2:19 PM

Good afternoon whn are u free so we can seat down ???

Mon, Oct 23 at 6:17 PM

Next week

Ok thk u just hit me with time and place

Fri, Nov 3 at 9:50 AM

????

Fri, Nov 3 at 4:41 PM

I'm thinking about how best to proceed. We can talk on Monday. If you'd like. I'll be on the road. I'm in New York City.

Monday Wht time

Mon, Nov 6 at 10:01 AM

Gm ???

whats going on!

Wed, Nov 8 at 3:40 PM

I hope everything is going well. But time is essence with my case and lack of communication got me very worried on what's going on here. Please give me a call. Did u file ? Wht is WEGMANS talking abt ? Whts ur next step I know ur busy but each time we supposed to talk or meet we never do whn are u free to meet I'll come whn ever to seat down and figure this out it's come up on a year with this case and know it takes time but show me whts going pleas ! Wht the time frame to we have ? I sent u the human rights paper wrk and my 15 day window is way pass now call me please

Let's talk tomorrow.

Time

worried on what's going on here.

Please give me a call. Did u file ? Wht is WEGMANS talking abt ? Whts ur next step I know ur busy but each time we supposed to talk or meet we never do whn are u free to meet I'll come whn ever to seat down and figure this out it's come up on a year with this case and know it takes time but show me whts going pleas ! Wht the time frame to we have ? I sent u the human rights paper wrk and my 15 day window is way pass now call me please

Let's talk tomorrow.

Time

11

You calling me or u want me to call ??

Call me

Tomorrow

Attachment 6

March 1, 2023, Letter from Mr. McMurray stating they are representing Mr. Floyd in his case against Wegmans.

**advocates
for justice
chartered attorneys**

225 Broadway, Suite 1902
New York, New York 10007

t. (716) 517-5506
f. (212) 285-1410

www.afjlaw.com

Nathan D. McMurray
Special Counsel

nmcmurray@advocatesny.com

March 1, 2023

To: Lamar Floyd

Re: Dispute Regarding Hostile Work Environment

Dear Mr. Floyd:

We undertake your representation in connection with the matter described below on the following terms.

SUBJECT MATTER

This letter, when countersigned by you, will constitute your retainer agreement with Advocates for Justice, Chartered Attorneys (the “Firm”) with respect to ongoing claims and disputes related to the hostile work environment you endured at Wegmans. By signing this letter, you acknowledge and understand that the Firm cannot and does not promise a successful outcome.

As a reminder, now that we plan to commence possible litigation, you must preserve all documents, whether favorable or unfavorable, in whatever form they exist, including hard copies and electronic copies and emails, related to this dispute. We recommend creating a file folder for all hard copies, placing electronic copies in a separate folder on your hard drive, and placing emails in a separate email folder so that information is not inadvertently deleted. Also, please provide these documents and other evidence to the Firm at your earliest possible convenience.

FEES AND EXPENSES

You agree to pay the Firm one-third of the gross amount received by way of any judgment or settlement resolving the matter, (1) less whatever attorneys’ fees are awarded by the court; and (2) less whatever you have already paid the Firm via retainer.

TERMINATION OF AGREEMENT

You have the right to terminate this agreement for any reason, upon written notice to the undersigned. Similarly, we may seek to withdraw as your counsel for any reason as may arise. Should such withdrawal occur, it would be upon reasonable written notice to you and in compliance with legally acceptable standards.

**advocates
for justice
chartered attorneys**

You are hereby notified, provided, and referred to a Statement of Clients' Rights and Responsibilities, as well as Part 137 of the Rules of the Chief Administrator of the Courts (22NYCRR) and the related rules of the Joint Committee on Fee Disputes and Conciliation, the arbitral body approved by the Board of Governors of the New York State Fee Dispute Resolution Program to administer Part 137 proceedings in New York County. Although we do not anticipate any disagreement regarding our fees, nonetheless, please note that disputes regarding fees and expenses are subject to arbitration pursuant to Part 137.

If this agreement is acceptable, please sign below and return it to us with your retainer payment. Of course, if you have any questions, please feel free to telephone me. We look forward to representing you on this important matter.

Sincerely,
Nathan McMurray

AGREED AND ACCEPTED:

Lamar Floyd

Address: _____

Telephone Numbers: _____ (home) (cell) (work)

Email Address: _____

2
6-1

Attachment 7

Complaint that was presented to Mr. Floyd by Mr. McMurray who stated he filed it with the Western District of New York.

This is when Mr. Floyd realized nothing had been filed.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

United States *ex rel.*

Lamar Floyd

Plaintiff,

vs.

Wegmans

Defendant

Civil Action No. _____

Complaint and Jury Demand

Date Received _____

COMPLAINT

PARTIES

1. Plaintiff Lamar Floyd ("Plaintiff") is an individual residing at 49 Dayton Street, Rochester, NY, 14621. He is a lifelong resident of Monroe County. He is a Black man.
2. Defendant Wegmans Food Markets, Inc. ("Wegmans") is a corporation authorized to conduct business in New York State, with its place of business located at 1500 Brooks Avenue.

JURISDICTION AND VENUE

3. Venue is proper in the United States District Court for the Western District of New York under 28 U.S.C. § 1391(b) and (c) and 31 U.S.C. § 3732 because Defendants are headquartered and transact business in the Western District of New York.

OPENING STATEMENTPARTIES

4. The Plaintiff has been employed at Wegmans since 2001, primarily working as a "grocery selector" in the warehouse center, maintaining an exemplary record until joining Union Local 118 four years ago, which marked the onset of ongoing harassment and discrimination.
5. In 2022, after a minor incident, the Plaintiff received severe reprimands and an extended removal from certification, and a subsequent sick leave was wrongly marked as a "no call no show." Furthermore, a confrontation with management led to unjust penalties.
6. In November of the same year, the Plaintiff objected to improperly communicated mandatory overtime, resulting in a suspension and demerit point. Despite White employees facing similar situations without punishment, the Plaintiff's complaint was dismissed, prompting his resignation from Wegmans.

FACTUAL BACKGROUND

7. Plaintiff has been employed by Wegmans since 2001.
8. Plaintiff's primary role at Wegmans was that of a "grocery selector" in the warehouse center, involving the operation of heavy machinery, for which Plaintiff held OHSA certification.
9. Approximately four years ago, Plaintiff became a member of Union Local 118, affiliated with the Teamsters. Throughout this period, Plaintiff maintained an impeccable record without any disciplinary actions or accidents.

10. However, Plaintiff's experience changed significantly after joining the Teamsters, leading to ongoing harassment and eventual discrimination.
11. In 2022, following a minor incident involving a forklift and a door, Plaintiff received severe reprimands and was removed from recertification for an unusually extended period, lasting nearly one month, contrary to the customary practice of just a few days.
12. During the same year, Plaintiff called in sick, but the absence was recorded as a "no call no show." Despite providing phone records, specifically call logs from his mobile phone, which clearly documented that he had called in sick, Warehouse Manager John Mirr disregarded this evidence and assessed a point and a half demerit.
13. On October 1st, 2022, Plaintiff informed Team Leader Paul Trapasso about his intention to leave work early, receiving verbal consent. Later, management reversed the decision and subjected Plaintiff to further penalties for his absence.
14. On June 11th, 2022, Plaintiff was involved in a forklift accident. Department Manager Cam Paul included an unrelated conversation with Safety Director Sean Pubman regarding perceived misuse of other power equipment by Plaintiff, specifically not using both hands on a power jack, in the accident report.
15. Plaintiff protested the combination of these unrelated incidents in the accident report, asserting that it constituted a "breach of contract" due to the incident with Pubman occurring before the 10-day reporting window.
16. Plaintiff's confrontation with a different Team Leader, believed to be named Javier, escalated the harassment. During an exercise session with coworkers in the fresh

foods area, Javier instructed Plaintiff to "Get to work." In response to Plaintiff's inquiry about why he had to work while others were not working, Javier retorted, "Because I said so."

17. Taken aback by this response, Plaintiff clocked out and left for home. After reporting this incident to Director of Warehouse Operations Roy Winters, Plaintiff was compensated for the missed time but still received a 1/2 point demerit.
18. On October 7th, 2022, Plaintiff decided to file a complaint regarding the ongoing harassment with Wegmans' Warehouse Management. Human Resources Manager Jim Loiacona dissuaded Plaintiff from filing the complaint and requested that he "wait" for a resolution. Loiacona assured Plaintiff that he would respond within a few days.
19. On October 17th, 2022, Union Steward Kenny Chonge informed Plaintiff that Loiacona was unavailable for a meeting.
20. In November, an announcement was made to the entire warehouse workforce via a computer monitor used for work assignments, stating that all employees were required to work an additional 2 hours of overtime after their shifts.
21. Plaintiff was aware that this directive contradicted the terms of the Union Contract, which mandated that overtime requests be made individually and not through a computer monitor.
22. Plaintiff communicated to management his unwillingness to comply with the overtime requirement due to its improper communication method. Consequently, Plaintiff left at the end of his scheduled shift.

23. As a result, Plaintiff received a five-day suspension and one demerit point. Upon returning from his suspension, Plaintiff discovered that other White employees had also acted similarly but had not faced the same level of punishment, if any.
24. Plaintiff lodged a complaint with the Human Resources (HR) department, seeking the reinstatement of his five days and pointing out the disparity in treatment. HR informed him that Warehouse Manager John Mirr had refused to rectify the situation.
25. Plaintiff emphasized that this disparate treatment was discriminatory and that employees should not be treated differently for the same offense.
26. Wegmans management acknowledged the difference in treatment but declined to address the issue.
27. Following these events, Plaintiff chose to resign from the company in protest. Remarkably, the company compensated Plaintiff for the five days upon his resignation.

CAUSES OF ACTION

COUNT I: Discrimination and Retaliation

Plaintiff hereby incorporates paragraphs 1 through 23 by reference.

Wegmans engaged in unlawful discrimination and retaliation against Plaintiff due to his advocacy for employee rights and his union membership.

Such conduct violated state and federal anti-discrimination and retaliation laws, including but not limited to [Specify relevant laws].

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Lamar Floyd respectfully requests the following relief:

An award of damages to compensate for all economic and non-economic losses sustained as a result of Defendants' unlawful conduct, in an amount to be determined at trial;

An injunction prohibiting further discriminatory and retaliatory actions against Plaintiff by Defendants;

Attorneys' fees and costs associated with this action;

Any further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff Lamar Floyd demands a trial by jury for all issues so triable.

Respectfully Submitted,

/s/ Nathan D. McMurray

Nathan D. McMurray
1041 Foxcroft Rd
Grand Island, NY 14072
Phone: (716) 517-5506
nmcmurray@advocatesny.com

TEAMSTERS LOCAL UNION NO. 118*Affiliated with the International Brotherhood of Teamsters***Tim Barbeto**
*President, PEO***Dave Weilert**
Secretary-Treasurer**Jeremy Pietrzykowski**
*Vice-President***Anthony Wells**
*Recording Secretary***Ty Van Pelt**
*Business Agent***BeLinda Combs**
*Business Agent***Karen Kostera**
*Business Agent***John Morgan**
*Business Agent***Sean Walsh**
*Business Agent***Eric Hoff**
*Trustee***Emily Malone**
*Trustee***Gino Maniace**
Trustee

February 23, 2023

Re: Leaving Early

Lamar Floyd
49 Dayton St
Rochester, NY 14621

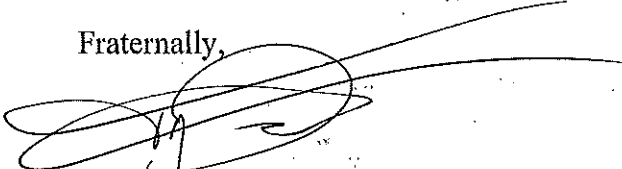
Dear Lamar,

In response to your questions on how the Union is addressing your issues with Wegmans that ultimately lead to your resignation, the Local is currently working on the following steps:

- The Local Union has an arbitration hearing scheduled for March 14 2023 regarding Wegmans food markets unilaterally changing the rules related to how employees notify the company of their desire to leave work early on any particular day.
- Also, the Union and the Company have meetings scheduled for the purpose of bargaining the effects of the Company attempting to force employees extension of shift overtime electronically on TV monitors, in an attempt to take away the employees ability to notify the company that they wish to leave early from a particular shift.

If you have any further questions regarding these issues feel free to call me at my office 585-256-1350

Fraternally,



Ty Van Pelt
Business Agent
Teamsters Local 118
Rochester, NY 14623